151 FERC ¶ 61,072
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Lucky Corridor, LLC	Docket Nos. ER15-839-000
Lucky Corridor, LLC Mora Line, LLC	ER15-842-000

ORDER CONDITIONALLY AUTHORIZING PROPOSALS
AND GRANTING WAIVERS

(Issued April 27, 2015)

1. On January 9, 2015, as amended on January 14, 2015, Lucky Corridor, LLC (Lucky Corridor) filed, pursuant to section 205 of the Federal Power Act (FPA)[1] and Part 35 of the Commission's regulations,[2] a request to amend its previously granted authorization and increase presubscription on the Lucky Corridor merchant transmission project (Lucky Corridor Project) to anchor customers.[3] On January 12, 2015, as amended on January 14, 2015, Lucky Corridor and Mora Line, LLC (Mora Line) (together, Applicants) filed a request for authorization to charge negotiated rates for the sale of transmission rights and service in connection with a new merchant transmission line (Mora Line Project) and for waiver of certain Commission regulations.

2. In this order, we conditionally accept Lucky Corridor's request to amend its previously granted authorization and increase presubscription on the Lucky Corridor Project. We also conditionally authorize Applicants to charge negotiated rates for the Mora Line Project and grant Applicants' request for waivers.

[1] 16 U.S.C. § 824d (2012).

[2] 18 C.F.R. pt. 35 (2014).

[3] *Lucky Corridor*, *LLC*, 141 FERC ¶ 61,002, at P 22 (2012) (October 2012 Order).

I. Background

A. Applicants

3. Lucky Corridor is a limited liability company organized under the laws of the State of Colorado. Lucky Corridor is an independent transmission company, as defined by the Commission's regulations,[4] and does not own or control any electric transmission, distribution, or generation facilities, including gas or oil pipeline facilities, and is not affiliated with any entity that owns such facilities.[5] Lucky Corridor is in the process of developing two separate transmission projects, the Lucky Corridor Project and the Mora Line Project.

4. Lucky Corridor has a single, wholly-owned subsidiary and affiliate, Mora Line. Mora Line was organized in July 2013 under Colorado law. Currently, Lucky Corridor owns the real estate, engineering work, and other assets pertaining to the Mora Line Project; however, prior to entering into any financial arrangements for the construction of the Mora Line Project, Lucky Corridor will transfer or assign all permits and agreements concerning transmission service on the Mora Line Project to Mora Line.[6]

B. Description of the Projects

1. Lucky Corridor Project and October 2012 Order

5. In its original filing, Lucky Corridor proposed to construct a 93-mile upgrade of an existing 115 kV line owned by Tri-State Generation and Transmission Association, Inc. (Tri-State) to a double-circuit 230 kV line capable of delivering approximately an additional 850 MW, increasing the line's total capacity from 250 MW to 1100 MW.[7] Lucky Corridor stated that the proposed upgrade would run from Tri-State's 230 kV Gladstone, New Mexico substation to Tri-State's 345 kV Taos substation for delivery to

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[4] *Id*. P 2 (citing 18 C.F.R. § 35.35(b)(1) (2012)).

[5] Lucky Corridor states that individuals who own an interest in Gallegos Wind Farm, LLC (Gallegos Wind Farm) together own less than nine percent of Lucky Corridor. Mora Line Project Initial Filing at 3 n.3.

[6] *Id.* at 3.

[7] The Commission noted that Lucky Corridor stated it was evaluating an alternative configuration for the Lucky Corridor Project. October 2012 Order, 141 FERC ¶ 61,002 at P 3 n.4.

the Public Service Company of New Mexico's (PNM) transmission system at Four Corners. Since the proposed Lucky Corridor Project would interconnect to Tri-State's transmission system, the Commission directed Lucky Corridor to file its joint ownership agreement with Tri-State within 15 days of the execution of the agreement.[8]

6. In the October 2012 Order, the Commission conditionally authorized Lucky Corridor's request to charge negotiated rates for transmission rights and service on the Lucky Corridor Project, including Lucky Corridor's proposal to presubscribe up to 70 percent of the Lucky Corridor Project's capacity through long term-bilateral agreements to anchor customers. However, the Commission specifically stated that it would not authorize any preference based on the type of generating resources.[9] The Commission required Lucky Corridor to submit a report detailing the results of the anchor tenant process and describing the terms of and the relevant facts and circumstances leading to those agreements. The Commission also approved Lucky Corridor's request to sell the remaining 30 percent of the Lucky Corridor Project's capacity using an open season auction, subject to the submission of informational reports to be filed within 30 days of the open season.[10] The Commission stated that the reports must include: the terms of the open season, including notice of the open season and method for evaluating bids; the identity of parties that purchased capacity; and the amount, term, and price of that capacity.

7. In the instant filing, Lucky Corridor states that it is likely, although not certain, that it will change the configuration of the Lucky Corridor Project to a stand-alone, single circuit 345 kV line. Lucky Corridor states that this new configuration would consist of a 130-mile, 345 kV single circuit line directly connecting to PNM's Ojo substation. In addition, Lucky Corridor states that the 345 kV single circuit line would provide 850 MW of capacity, cost approximately $83 million less than the 245 kV double circuit line discussed in the October 2012 Order, and provide the same economic and reliability benefits as the initial project configuration.[11] Lucky Corridor asserts that the final choice between the two proposed project configurations depends on several regulatory and market factors and that it has submitted both project configurations for approval under the National Environmental Policy Act. If the project is reconfigured as a stand-alone

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[8] *Id.* P 14.

[9] *Id.* P 22.

[10] *Id.* P 24.

[11] Lucky Corridor Project Initial Filing at 2-3.

345 kV line, Lucky Corridor states that it will not be necessary to execute the joint ownership agreement with Tri-State[12] required by the October 2012 Order.[13]

8. Lucky Corridor requests that the Commission revise Lucky Corridor's existing authority to presubscribe up to 70 percent of the capacity on the Lucky Corridor Project to anchor customers to 100 percent, consistent with the Commission's Policy Statement issued after the October 2012 Order.[14] Lucky Corridor explains that it has tentatively arranged for the presubscription of 59 percent (or 500 MW) of the Lucky Corridor Project's capacity to a single anchor customer, Gallegos Wind Farm, but has allocated no other capacity through its open season efforts. Lucky Corridor contends that the additional flexibility provided in the Policy Statement will make the actual construction of the Lucky Corridor Project more likely.[15]

2. <u>Mora Line Project</u>

9. Applicants state that the Mora Line Project is a proposed 102-mile, 115 kV transmission line with 180 MW of capacity whose planned route will facilitate interconnection with one of Gallegos Wind Farm's projects in New Mexico.[16] Applicants plan for the Mora Line Project to interconnect with Tri-State's Gladstone and Storrie Lake substations in Nevada for transmission to PNM's Ojo substation and ultimately to the transmission system at Four Corners. Applicants estimate the construction of the Mora Line Project to total approximately $65 million and for commercial operations to begin in 2016.[17] Applicants add that they will assume full market risk for the Mora Line Project.[18] Finally, Applicants note that the Mora Line

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[12] *Id*. at 8.

[13] October 2012 Order, 141 FERC ¶ 61,002 at P 14.

[14] *Allocation of Capacity On New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects; Priority Rights to New Participant-Funded Transmission,* 142 FERC ¶ 61,038 (2013) (Policy Statement).

[15] Lucky Corridor Project Initial Filing at 11-12.

[16] Mora Line Project Initial Filing at 5.

[17] *Id.* at 8, 11.

[18] *Id.* at 6.

Project is independent from and not a part of the Lucky Corridor Project, as each project can be built and function fully without the other project.

10. Applicants also explain that the Mora Line Project offers significant economic benefits to the northern New Mexico region. For example, Applicants state that the construction of the Mora Line Project will provide an immediate economic stimulus to the region in the form of job creation and additional tax base.[19] Moreover, Applicants assert that the Mora Line Project has the potential to assist in the resupply of energy at Four Corners to replace diminishing coal generation capacity and maintain energy market liquidity, in addition to fostering generation development in the region.[20]

11. Applicants request that the Commission grant their request for authorization to charge negotiated rates for transmission rights and service on the proposed Mora Line Project. Applicants also request that the Commission approve the proposed capacity allocation process, including the request to presubscribe up to 100 percent of the Mora Line Project's capacity to anchor customers through its anchor customer selection process, consistent with the Commission's Policy Statement. Finally, Applicants request that the Commission grant their request for waiver of the filing requirements of Subparts B and C of Part 35 of the regulations, except for sections 35.12(a), 35.13(b), 35.15 and 35.16, and waiver of Form No. 1 Annual Report of Major Electric Utilities, Licenses and Others filing requirements.[21]

II. <u>Notices and Responsive Pleadings</u>

12. Notice of Lucky Corridor's January 9, 2015 filing in Docket No. ER15-839-000 was published in the *Federal Register*, 80 Fed. Reg. 2688 (2015), with interventions and protests due on or before January 30, 2015. None was filed.

13. Notice of Applicants' January 12, 2015 filing in Docket No. ER15-842-000 was published in the *Federal Register*, 80 Fed. Reg. 2687 (2015), with interventions and protests due on or before February 2, 2015. PNM and Tri-State submitted timely motions to intervene.

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[19] *Id.* at 8.

[20] *Id.* at 9.

[21] *Id.* at 19.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

B. Negotiated Rate Authority

15. In the October 2012 Order, the Commission granted Lucky Corridor's request to charge negotiated rates for the Lucky Corridor Project based on the proposal presented at that time. Lucky Corridor now seeks authorization to presubscribe up to 100 percent of the capacity on the Lucky Corridor Project to anchor customers. In addition, Applicants request the Commission's authorization to charge negotiated rates on a second project, the Mora Line Project, and also request the authority to presubscribe up to 100 percent of the capacity on the Mora Line Project to anchor customers. In this order, we conditionally grant Lucky Corridor's request to presubscribe up to 100 percent of the Lucky Corridor Project's capacity to anchor customers based on the facts as presented in the record. In addition, we conclude that the Mora Line Project meets the requirements for negotiated rate authority, and conditionally grant Applicants' request to presubscribe up to 100 percent of the Mora Line Project's capacity based on the facts as presented in the record.

16. In addressing requests for negotiated rate authority from merchant transmission providers, the Commission is committed to fostering the development of such projects where reasonable and meaningful protections are in place to preserve open access principles and to ensure that the resulting rates for transmission service are just and reasonable.[22] The Commission's analysis for evaluating negotiated rate applications focuses on four areas of concern: (1) the justness and reasonableness of rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including

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[22] *See, e.g., TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230, at 61,838-39 (2000) (accepting a request to charge negotiated rates on a merchant transmission project, subject to conditions, addressing, among other things, the merchant's open season proposal); *Mountain States Transmission Intertie, LLC*, 127 FERC ¶ 61,270, at PP 57, 59 (2009) (denying a request to charge negotiated rates on a merchant transmission project because, among other things, sufficient protections did not exist to ensure that rates for service would be just and reasonable); *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104 (2011) (authorizing Hudson Transmission Partners, LLC to charge negotiated rates for transmission service).

affiliate preference; and (4) regional reliability and operational efficiency requirements.[23] This approach simultaneously acknowledges the financing realities faced by merchant transmission developers and the consumer protection mandates of the FPA and the Commission's open access requirements. Moreover, this approach allows the Commission to use a consistent framework to evaluate requests for negotiated rate authority from a wide range of merchant projects that can differ substantially from one project to the next.

1. Policy Statement

17. In the Policy Statement, the Commission clarified and refined its policies governing the allocation of capacity for new merchant transmission projects and new nonincumbent, cost-based, participant-funded transmission projects.[24] The Commission now allows the developer of a new merchant transmission project to select a subset of customers, based on not unduly discriminatory or preferential criteria, and negotiate directly with those customers to reach agreement for procuring up to 100 percent of transmission capacity when the developer: (1) broadly solicits interest in the project from potential customers; and (2) demonstrates to the Commission that the developer has satisfied the solicitation, selection and negotiation process set forth in the Policy Statement.[25] To the extent the Commission determines that a merchant transmission developer complies with such policies, the Commission will find that the developer has satisfied the second (undue discrimination) and third (undue preference) factors of the four-factor analysis.[26]

18. Under the Policy Statement, once a developer has identified a subset of customers through the open solicitation process, the Commission will allow the developer to engage in bilateral negotiations with each potential customer. In these negotiations, the Commission will allow for distinctions among prospective customers based on transparent and not unduly discriminatory or preferential criteria, with the potential result

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[23] *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 37 (2009) (*Chinook*).

[24] Policy Statement, 142 FERC ¶ 61,038 at P 1.

[25] *Id.* P 16.

[26] *Id.* P 15.

that a single customer, including an affiliate, may be awarded up to 100 percent of the transmission capacity.[27]

2. Four-Factor Analysis

a. Factor One: Just and Reasonable Rates

19. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.[28] To do so, the Commission must determine that the merchant transmission owner has assumed the full market risk for the cost of constructing its proposed transmission project. Additionally, the Commission must determine whether the project is being built within the footprint of the merchant transmission owner's (or an affiliate's) traditionally regulated transmission system; if so, the Commission must determine that there are no captive customers who would be required to pay the costs of the project. The Commission also considers whether the merchant transmission owner or an affiliate already owns transmission facilities in the particular region where the project is to be located, what alternatives customers have, whether the merchant transmission owner is capable of erecting any barriers to entry among competitors, and whether the merchant transmission owner would have any incentive to withhold capacity.

i. Applicants' Proposal

20. Applicants assert that they assume full market risk for the Mora Line Project.[29] In addition, with the exception of the Lucky Corridor Project, Applicants state that they are new entrants into the transmission market, do not own any other transmission facilities, and are not affiliated with any entity that does. Applicants explain that they do not, either directly or through an affiliate, own or control any electric transmission, distribution or generation facilities, including natural gas or oil pipeline facilities, and, thus, cannot erect

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[27] *Id.* P 28.

[28] *See Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006, at P 17 (2010).

[29] The polices adopted in the Policy Statement apply to factors two and three of the Commission's four-factor analysis. *See* Policy Statement, 142 FERC ¶ 61,038 at P 15. Therefore, since the Commission found that Lucky Corridor satisfied the four-factor analysis for negotiated rate authority in the October 2012 Order, we will not reevaluate Lucky Corridor's proposal as it pertains to factors one and four of the analysis. *See* October 2012 Order, 141 FERC ¶ 61,002 at PP 13-14, 32.

barriers to entry and do not have the incentive to withhold transmission capacity. Applicants state that their only affiliate is Gallegos Wind Farm, which holds less than a nine percent ownership in Lucky Corridor, and that this fact is immaterial to the request for negotiated rate authority.[30]

21. Applicants also contend that the Mora Line Project has no captive customers. Applicants argue that, although Gallegos Wind Farm requires transmission on the Mora Line Project, both entities have a shared incentive for just and reasonable rates to assure that the delivered price of electricity at Four Corners is competitive.[31] Applicants explain that, if its transmission rates are not competitive and realistic, then Gallegos Wind Farm will not succeed in its project and, since no other customers have expressed interest in capacity on the Mora Line Project, Applicants would be unable to move forward with its construction.

ii. Commission Determination

22. We conclude that Applicants' request for authority to charge negotiated rates for service on the Mora Line Project satisfies the first factor of the four-factor test, and is just and reasonable. Applicants meet the definition of a merchant transmission owner because they assume the full market risk associated with the Mora Line Project and have no captive customers. Moreover, even though Gallegos Wind Farm requires service from the Mora Line Project, Gallegos Wind Farm will do so only if it is cost-effective. In addition, because Applicants do not own any transmission facilities within the region other than the proposed Lucky Corridor Project, Applicants are not able to erect barriers to entry or exercise market power in the relevant market. Accordingly, these factors lead us to conclude that the requested negotiated rate authority meets the first of the *Chinook* factors, meaning that it is just and reasonable for service on the Mora Line Project.

b. Factor Two: Undue Discrimination

23. As explained in *Chinook*, the Commission has in the past primarily looked at two factors to ensure that applicants cannot exercise undue discrimination when approving negotiated rate authority: (1) the terms and conditions of a merchant developer's open season; and (2) its Open Access Transmission Tariff (OATT) commitments (or in the regional transmission operators (RTO)/independent system operators (ISO) context, its commitment to turn operational control over to the RTO or

[30] Mora Line Project Initial Filing at 16.

[31] *Id*. at 17.

ISO).[32] The Policy Statement, however, provides an alternative to conducting an open season. Under this alternative, a developer may demonstrate no undue discrimination or preference by conducting an open solicitation that complies with the requirements of the Policy Statement.[33] Specifically, the developer must: (1) broadly solicit interest in the project from potential customers; and (2) after the solicitation process, demonstrate to the Commission that it has satisfied the solicitation, selection, and negotiation process criteria set forth in the Policy Statement.[34]

24. In the Policy Statement, the Commission explained that applicants must issue broad notice of the project in a manner that ensures that all potential and interested customers are informed of the proposed project, such as by placing notice in trade magazines or regional energy publications.[35] Such notice should include developer points of contact, pertinent project dates, and sufficient technical specifications and contract information to inform interested customers of the nature of the project, including: (1) project size/capacity; (2) end points of the line; (3) projected construction and/or in-service dates; (4) type of line; (5) precedent agreement (if developed); and (6) other capacity allocation arrangements (including how the developer will address potential oversubscription of capacity).[36] The developer should also specify in the notice the criteria it plans to use to select transmission customers. In addition, the developer may also adopt a specific set of objective criteria it will use to rank prospective customers, provided it can justify why such criteria are appropriate. Finally, the Policy Statement states that the Commission expects the developer to update its notice if there are any material changes to the nature of the project or the status of the capacity allocation process, in particular to ensure that interested entities are informed of any remaining available capacity.[37]

25. In the Policy Statement, the Commission explained that merchant developers must continue to disclose the results of their capacity allocation process, though this disclosure

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[32] *Chinook*, 126 FERC ¶ 61,134 at P 40.

[33] Policy Statement, 142 FERC ¶ 61,038 at PP 15, 23.

[34] *Id.* P 16.

[35] *Id.* P 23.

[36] *Id.* P 20.

[37] *Id.* PP 24-27.

will be part of the Commission's approval of the capacity allocation process and thus will be noticed and acted upon under section 205 of the FPA. The Policy Statement explains that the Commission expects developers to demonstrate that the processes that led to the identification of transmission customers and the execution of the relevant contractual arrangements are consistent with the Policy Statement and the Commission's open access principles. In this filing, the developer should describe the criteria used to select customers, any price terms, and any risk-sharing terms and conditions that served as the basis for identifying transmission customers selected versus those that were not, as well as provide certain information listed in the Policy Statement in order to provide transparency to the Commission and interested parties.[38] The Policy Statement emphasizes that the information in the post-selection demonstration is an essential part of a merchant developer's request for approval of a capacity allocation process, and that the developer will have the burden to demonstrate that its process was in fact not unduly discriminatory or preferential, and resulted in rates, terms, and conditions that are just and reasonable.[39]

26. The Commission allows developers discretion in the timing of requests for approval of capacity allocation processes. The Policy Statement provides two examples. First, a developer can seek approval of its capacity allocation approach after having completed the process of selecting customers in accordance with Commission policies. Alternatively, a developer can first seek approval of its capacity allocation approach, and then demonstrate in a compliance filing to the Commission order approving that approach that the developer's selection of customers was consistent with the approved selection process.[40]

i. <u>Lucky Corridor's Proposal</u>

27. Lucky Corridor explains that it has entered into two separate contracts with Gallegos Wind Farm to presubscribe 59 percent (or 500 MW) of the Lucky Corridor Project's capacity. First, Lucky Corridor states that, on June 4, 2013, it entered into a conditional option with Gallegos Wind Farm for 300 MW of east-to-west transmission.[41] Lucky Corridor contends that this option is not binding in the event that it is unable to

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[38] *Id.* P 30.

[39] *Id.* P 32.

[40] *Id.* P 31.

[41] Lucky Corridor Project Initial Filing at 5.

finance the Lucky Corridor Project and that service under the agreement would be subject to the terms and conditions of a firm transmission service agreement consistent with its OATT.

28. Second, Lucky Corridor states that, in early 2014, Gallegos Wind Farm requested that the New Mexico State Land Office conduct an auction for the right to develop wind energy resources on state lands adjacent to land already owned by Gallegos Wind Farm. Lucky Corridor explains that the New Mexico State Land Office then ran full-page advertisements for the opportunity to bid on the right to develop wind resources on state lands in various state newspapers over 10 weeks in the spring of 2014. Concurrent with these ads, Lucky Corridor states that it advertised the availability of capacity on the Lucky Corridor Project on the same page as the auction advertisements.[42] Specifically, Lucky Corridor states that it ran advertisements for the Lucky Corridor Project on eight dates in two state newspapers and also recorded an advertisement with the Newsline for the Blind. Lucky Corridor contends that it received no serious indications of interest in the capacity except for one bid from Gallegos Wind Farm. Subsequently, on June 26, 2014, Lucky Corridor states that it entered into the second anchor customer agreement with Gallegos Wind Farm for 200 MW of east-to-west transmission.[43]

29. Lucky Corridor states that it continues to seek potential customers for presubscription of the remaining capacity through its website, direct meetings and telephone conferences with gas and renewable energy generation developers, and attendance at industry conferences.[44] Lucky Corridor also states that it plans to conduct additional advertising efforts in 2015; however, given the lack of response to its prior efforts, Lucky Corridor anticipates that future advertising will be unsuccessful. Instead, Lucky Corridor believes that other developers are more likely to seek transmission capacity through anchor customer arrangements rather than through an open season process. Specifically, Lucky Corridor notes that Gallegos Wind Farm is in the process of expanding its wind farms and is its best prospect for agreements covering the Lucky Corridor Project's remaining capacity.[45] Thus, Lucky Corridor requests that the Commission revise its existing authority to presubscribe up to 70 percent of the Lucky

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[42] *Id.*, Greene Testimony at 4.

[43] *Id.* at 7.

[44] *Id.*, Greene Testimony at 5-6.

[45] *Id.* at 11.

Corridor Project's capacity to anchor customers to permit it to presubscribe up to 100 percent, consistent with the Policy Statement.

30. Lucky Corridor asserts that, although it has presubscribed 59 percent of the Lucky Corridor Project's capacity, its presubscription efforts are ongoing and it would be premature to submit a formal report to the Commission as required by the October 2012 Order.[46] Lucky Corridor notes that the Commission allows developers discretion in timing a request that the Commission approve their capacity allocation process.[47] Thus, Lucky Corridor commits to filing a formal report with the Commission pursuant to section 205 of the FPA, as required by the Policy Statement, once it has completed its presubscription marketing.[48]

ii. <u>Applicants' Proposal</u>

31. Applicants state that they conducted substantially the same advertising for the Mora Line Project as for the Lucky Corridor Project. Specifically, Applicants state that they ran advertisements for the available capacity on the Mora Line Project concurrently with the advertisements for the state-run land auction and the available capacity on the Lucky Corridor Project over the same 10-week period.[49] Similarly, Applicants state that they received no serious indications of interest in the Mora Line Project's available capacity other than one bid from Gallegos Wind Farm.

32. Subsequently, on June 26, 2014, Applicants entered into an anchor customer agreement with Gallegos Wind Farm for the full capacity of the Mora Line Project (i.e., 180 MW). Applicants contend that the agreement is not binding in the event that they are unable to finance the Mora Line Project and that service would be subject to the terms and conditions of a firm transmission service agreement consistent with its OATT.[50] Furthermore, in the event that capacity becomes available on the Mora Line

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[46] *Id.* at 4 (citing October 2012 Order, 141 FERC ¶ 61,002 at P 23).

[47] *Id.* (citing Policy Statement, 142 FERC ¶ 61,038 at P 31).

[48] *Id.* at 4-5.

[49] Applicants ran advertisements for the Mora Line Project on eight dates in two state newspapers and also recorded an advertisement with the Newsline for the Blind. Mora Line Project Initial Filing, Greene Testimony at 4.

[50] Applicants commit to filing an OATT for the Mora Line Project. *Id.* at 18.

Project for presubscription, Applicants state that they will offer it openly and that any rate differentials between new and anchor customers will be objectively justifiable.[51]

33. Applicants assert that no service has been or will be sold under the anchor tenant agreement with Gallegos Wind Farm unless the Commission grants the authority requested in the instant filing.[52] In addition, Applicants commit to filing a full report on the Mora Line Project capacity allocation process under section 205 of the FPA, after which the Commission will be able to evaluate any claims of prejudice. Applicants note, however, that adverse claims are unlikely given the lack of interest in the remaining capacity of the Lucky Corridor Project, which Applicants note has the transmission capacity available to serve a path similar to that of the Mora Line Project.[53]

34. Finally, Applicants state that, at this time, they have no option to turn operation of the Mora Line Project over to an RTO or ISO. In the event that an RTO or ISO forms and includes or borders the Mora Line Project, Applicants commit to turn control of the Mora Line Project to that organization and, if applicable, the organization's OATT.[54]

iii. <u>Commission Determination</u>

35. As described above, a developer has discretion as to the timing of requests for approval of the capacity allocation process. In this case, Applicants indicate that they will seek approval of their capacity allocation approaches for the Lucky Corridor Project and Mora Line Project following the completion of their customer selection process, consistent with the Policy Statement.[55] In addition, Lucky Corridor and Applicants commit to submitting reports on the processes for both the Lucky Corridor Project and Mora Line Project, respectively, to the Commission pursuant to section 205 of the FPA and in a manner that complies with the reporting procedures specified in the Policy Statement.

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[51] *Id*.

[52] *Id.* at 10-11.

[53] *Id.* at 11.

[54] *Id.* at 18-19.

[55] Policy Statement, 142 FERC ¶ 61,038 at P 31.

36. First, concerning the Commission's requirement that merchant transmission developers issue broad notice of the project to all potential customers, we find that Applicants have satisfied the Commission's requirements for both the Lucky Corridor Project and Mora Line Project. Notably, Lucky Corridor has not allocated the entire capacity of the Lucky Corridor Project to anchor customers and states that it plans to continue its advertising efforts in 2015. Consistent with the requirements of the Policy Statement, we expect Lucky Corridor to update all potential customers of any changes to the configuration of the Lucky Corridor Project and/or the amount of available capacity.[56] In addition, we note that, in allocating the remaining capacity on the Lucky Corridor Project, we will not authorize any preference based on the type of generating resources, consistent with the Commission's findings in the October 2012 Order.[57]

37. Second, concerning the post-selection demonstration described in the Policy Statement, we note that Applicants plan to submit formal reports on the capacity allocation process for the Lucky Corridor Project and Mora Line Project at a later date. In the Policy Statement, the Commission outlined seven minimum criteria for merchant transmission developers to address in their demonstrations to provide sufficient transparency.[58] Since only one party has expressed interest in the capacity on the Lucky Corridor Project and Mora Line Project, some of these criteria may not apply directly to Applicants' capacity allocation processes; however, we expect Applicants to address all applicable criteria in their formal reports and include any additional information that may provide additional transparency to the Commission and interested parties. For example, in the instant filings, Applicants have identified Gallegos Wind Farm as the single customer for capacity on the Lucky Corridor Project and Mora Line Project; however, Applicants have not provided any information on the terms and prices involved in the associated anchor customer agreements. Therefore, we will condition our approval of Lucky Corridor's and Applicants' requests to presubscribe up to 100 percent of the capacity on the Lucky Corridor Project and Mora Line Project on Lucky Corridor and Applicants submitting formal reports to the Commission on the capacity allocation process for each project that address the seven criteria specified in the Policy Statement, no later than 30 days following the conclusion of its anchor customer negotiations.

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[56] In the Policy Statement, the Commission stated that it "expects the merchant transmission developer to update its posting if there are any material changes to the nature of the project or the status of the capacity allocation process, in particular to ensure that interested entities are informed of remaining available capacity." *Id*. P 27.

[57] October 2012 Order, 141 FERC ¶ 61,002 at P 22.

[58] Policy Statement, 142 FERC ¶ 61,038 at P 30.

38. Finally, we note that the Mora Line Project is not located in a region with an RTO or ISO and, therefore, Applicants commit to file their own OATT. Consistent with this commitment, Applicants must file an OATT with the Commission no later than one year prior to the commencement of service. Applicants must support any deviations from the *pro forma* OATT and the Commission will evaluate any proposed deviations to ensure that Applicants will provide open and non-discriminatory service on the Mora Line Project. We note that these directives are consistent with the directives provided by the Commission in the October 2012 Order.[59]

c. Factor Three: Undue Preference and Affiliate Concerns

39. In the context of merchant transmission, Commission concerns regarding the potential for affiliate abuse arise when the merchant transmission owner is affiliated with either the anchor customer, participants in the open season or solicitation, and/or customers that subsequently take service on the merchant transmission line. The Commission noted in the Policy Statement that it will continue to expect an affirmative showing that the affiliate is not afforded an undue preference. The Commission noted that the developer will bear a high burden to demonstrate that the assignment of capacity to its affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly preferential or discriminatory.

i. Applicants' Proposal

40. Applicants recognize that the potential for undue discrimination or preference, including affiliate preference, should be determined in accordance with the Policy Statement, which requires Applicants to file a report under section 205 of the FPA reflecting the processes leading to the identification of transmission customers and execution of relevant contractual arrangements.[60] Moreover, Applicants state that all capacity arrangements and transmission services provided over the Mora Line Project will be consistent with OATT obligations and the Commission's open access principles. In the event that capacity becomes available on the Mora Line Project, Applicants affirm that they will offer it openly and that any rate differentials between new and anchor customers will be objectively justifiable.[61]

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[59] October 2012 Order, 141 FERC ¶ 61,002 at P 25.

[60] Mora Line Project Initial Filing at 18.

[61] *Id.* at 14, 18.

ii. Commission Determination

41. In the October 2012 Order, the Commission found that Lucky Corridor addressed any potential affiliate concerns based on Lucky Corridor's commitments to: (1) not allocate capacity to affiliates without prior Commission authorization; (2) keep separate books of accounts and records, as required by the Commission's regulations; (3) file quarterly reports; and (4) comply with all applicable affiliate rules.[62] As mentioned above, Applicants state that Gallegos Wind Farm holds a nine percent interest in Lucky Corridor, although Applicants assert that this fact is immaterial to its request for negotiated rate authority. Since the issuance of the October 2012 Order, Lucky Corridor has entered into two anchor customer agreements for 59 percent of the Lucky Corridor Project's capacity with Gallegos Wind Farm. Additionally, Applicants state that they entered into an anchor customer agreement with Gallegos Wind Farm for the Mora Line Project's full capacity.[63]

42. In the Policy Statement, the Commission stated that it would allow merchant transmission developers to award up to 100 percent of a project's capacity to a single customer, including an affiliate, but that it would expect an affirmative showing that the affiliate is not afforded an undue preference. Notably, no customer other than Gallegos Wind Farm has expressed interest in the capacity on either the Lucky Corridor Project or Mora Line Project to date and, for this reason, we conclude that no undue preference exists between Applicants and Gallegos Wind Farm based on the facts presented in both filings. Nevertheless, in the event that a non-affiliated customer seeks transmission service on either project, we expect Applicants to include this information as part of the post-selection demonstration in the formal reports directed above. Specifically, Applicants should demonstrate that the assignment of capacity to any affiliate and the corresponding treatment of any non-affiliated potential customers is just, reasonable, and not unduly discriminatory.

d. Factor Four: Regional Reliability and Operational Efficiency

43. In order to ensure regional reliability and operational efficiency, the Commission expects that any merchant transmission projects connected to an RTO or ISO turn over operational control to the RTO/ISO. Further, merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements. Merchant transmission developers are required to comport with all applicable requirements of the

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[62] October 2012 Order, 141 FERC ¶ 61,002 at P 28.

[63] Mora Line Project Initial Filing at 10-11.

North American Electric Reliability Corporation (NERC) and any regional reliability council in with they are located.

i. Applicants' Proposal

44. Applicants assert that they will comply with all applicable NERC and Western Electricity Coordinating Council requirements and participate in all regional transmission planning processes that Order Nos. 890 and 1000 may require.[64] Applicants note that this commitment is consistent with its proposal for the Lucky Corridor Project that the Commission accepted in the October 2012 Order.[65]

ii. Commission Determination

45. As noted above, Applicants state that the Mora Line Project is not located in a region with an RTO or ISO. Additionally, Applicants commit to comply with applicable NERC and regional entity/regional reliability council requirements and participate in the Order Nos. 890 and 1000 planning processes. In light of these commitments, we find that Applicants have met the regional reliability and operational efficiency requirement subject to Applicants' continued participation in the necessary regional planning processes.

C. Waiver Requests

1. Applicants' Proposal

46. Applicants request that the Commission grant their request for waiver of the filing requirements in Subparts B and C of Part 35 of the regulations, except for sections 35.12(a), 35.13(b), 35.15, and 35.16, and waiver of the filing requirement for Form No. 1, Annual Report of Major Electric Utilities, Licensee and Others. Applicants argue that the filing requirements for which they request waiver pertain to information used to support cost-based rate filings and are inapplicable to merchant transmission owners with negotiated rate authority.[66] Applicants note that the Commission granted its request for waiver of these requirements in the October 2012 Order, consistent with Commission

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[64] *Id*. at 12, 19.

[65] *Id*. at 19 (citing October 2012 Order, 141 FERC ¶ 61,002 at PP 30-31).

[66] *Id*. at 19-20.

precedent, and assert that they will continue to maintain their books and records in accordance with the Commission's accounting and record retention requirements.[67]

2. Commission Determination

47. Applicants request waiver of certain cost-based data filing requirements that the Commission previously granted Lucky Corridor in the October 2012 Order. Because Applicants propose to charge negotiated rates, we find that the regulations requiring the filing of cost-based data are not applicable. Therefore, for good cause shown, and consistent with our prior orders, we will grant Applicants' request for waiver of the filing requirements of Subparts B and C of Part 35 of the Commission's regulations except for sections 35.12(a), 35.13(b), 35.15, and 35.16.[68]

48. We will also grant Applicants' request for waiver of the Form No. 1 filing requirement. The Commission previously granted Lucky Corridor's request for waiver of the Form No. 1 filing requirement in the October 2012 Order.[69] We note, however, that Applicants must continue to maintain their books and records in accordance with the Commission's accounting and record retention policies, as they have committed to doing.[70]

The Commission orders:

(A) Lucky Corridor's request to increase presubscription of capacity on the Lucky Corridor Project to anchor customers is hereby granted, subject to conditions, as discussed in the body of this order.

(B) Applicants are hereby granted authority to sell transmission service and rights on the Mora Line Project at negotiated rates, subject to conditions, as discussed in the body of this order.

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[67] *Id.* at 20 (citing October 2012 Order, 141 FERC ¶ 61,002 at PP 34-35).

[68] *Hudson Transmission*, 135 FERC ¶ 61,104 at P 42; *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 103 (2010); *Wyoming Colorado Intertie, LLC*, 127 FERC ¶ 61,125, at P 62 (2009); *Linden VFT, LLC*, 119 FERC ¶ 61,066, at P 42 (2007).

[69] October 2012 Order, 141 FERC ¶ 61,002 at P 35.

[70] *See* 18 C.F.R. pts. 101 and 125 (2014).

(C) Lucky Corridor is hereby directed to file with the Commission a report describing the terms of the anchor tenant agreements and the results of any open season for the Lucky Corridor Project within the earlier of 30 days after the end of the open season, if any, or within 30 days of when the line is fully presubscribed, as discussed in the body of this order.

(D) Applicants are hereby directed to file with the Commission a report describing the terms of the anchor tenant agreements and the results of any open season for the Mora Line Project within the earlier of 30 days after the end of the open season, if any, or within 30 days of when the line is fully presubscribed, as discussed in the body of this order.

(E) Applicants' request for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, and waiver of the Form No. 1 Annual Report of Major Electric Utilities, Licensee and Others filing requirement is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.